ST 07-0167-GIL 12/31/2007 INTERSTATE COMMERCE

This letter discusses the Interstate Commerce exemption. See 86 Ill. Adm. Code 130.605. (This is a GIL.)

December 31, 2007

Dear Xxxxx:

This letter is in response to your letter dated October 9, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

> On good faith of international sales, we sold a scanning device to a customer in Greece. We attempted to get the Value Added Tax back from the Ministry of Finance in Greece and filled out all the necessary paper work a couple of times in an attempt to get a refund in the amount of $1,146.00.
>
> Imagine our surprise when we received a letter back from the Ministry of Finance in Greece indicating they cannot accept our request for refund. We could have corrected the problem as far as dollar value goes, but it is hard when you read further that there is **no** reciprocity agreement between Illinois and Greece.
>
> As a result, we break even on this sale.
>
> For future reference, what other countries does Illinois not have a reciprocity agreement with?
>
> Thank you for your assistance, and if this is the wrong department please forward to the correct one for us.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase.

When tangible personal property is located in this State at the time of its sale (or is subsequently produced in this State) and then is delivered in this State to the purchaser, the gross receipts from the sale are subject to tax if the sale is at retail. However, the gross receipts from a sale in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made, the gross receipts are not subject to tax. See 86 Ill. Adm. Code 130.605(b). Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State, transports or sends the property out of this State for use outside the State or for use in the conduct of interstate commerce. See Section 130.605(a)(2).

For example, the exemption would apply when a seller makes delivery in Illinois to a freight forwarder who handles the arrangements for the property to be delivered outside the United States, not to be returned to the United States. The result would be different if the purchaser received or picked up the goods prior to delivery to a freight forwarder. Retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales. In order to document the exemption, the seller should obtain a statement from the purchaser that the property will be used exclusively outside the United States and a shipping document showing delivery of physical possession of the property to a freight forwarder in Illinois.

We are not sure what you mean by a “reciprocity agreement.” However, the State of Illinois does not provide any credit for foreign taxes that may be incurred to a customer in another country.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department’s Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk